IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)

Description of case

Date of decision:
14.06.2006

Criminal Appeal No. 1113 of 2001
(Old No. 3385 of 1985)

ALONGWITH

Criminal Government Appeal No. 1112 of 2001
(Old No. 678 of 1986 Appeal against acquittal)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Initials of Judges

Date: 14.06.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1113 of 2001
(Old No. 3385 of 1985)

1. Prem Singh
   S/o Puttu Singh
   P.S. Rudrapur
2. Phool Singh @ Phula (since deceased)
   S/o Chotey
   R/o village Buksaura
   P.S. Rudrapur.
3. Madan Singh
   S/o Kalyan Singh
   R/o Village Charanpur
   P.S. Rudrapur. …Appellants

Versus

State of U.P. ….Respondent

Mr. Sayed Nadim, Advocate for the appellants.
Mr. H.C. Pande, Additional Government Advocate for the State.

ALONGWITH

Criminal Government Appeal No. 1112 of 2001
(Old No. 678 of 1986 Appeal against acquittal)

State of U.P. ……Appellant

Versus

1. Prem Singh
2. Phool Singh @ Phula (Since deceased)
   S/o Chotey
3. Phool Singh
   S/o Anup Singh
4. Moti Singh (since deceased)
5. Madan Singh ….Respondents.

Mr. H.C. Pande, Additional Government Advocate of the State.
None for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

These two appeals have arisen out of the same judgment and order dated 04.11.1985, passed by the then learned Special Judge/Additional Sessions Judge, Nainital, whereby in Sessions Trial No. 194 of 1983, accused/appellants Prem Singh, Phool Singh @ Phula S/o Chotey and Madan Singh, have been convicted under Section 396 of Indian Penal Code, 1860 (for brevity herein-after I.P.C.) and each one of them has been sentenced to imprisonment for life. However, the said three were not found guilty of the offence punishable under Section 412 of I.P.C. Accused/respondents Phool Singh S/o Anup Singh and Moti Singh, have not been found guilty by the trial court, of any of the charges of offences punishable under Section 396, 147, 323/149 of I.P.C. Appellants Prem Singh, Phool Singh @ Phula S/o Chotey and Madan Singh have preferred appeal under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein-after Cr.P.C.) against their conviction and sentence awarded. While the State has preferred appeal under Section 378 (3) of Cr.P.C. against the same impugned judgment and order as the trial court has not convicted the said accused/appellants under other offences except 396 I.P.C. The State appeal is also against the failure on part of trial court in convicting

accused/respondents Phool Singh S/o Anup Singh and Moti Singh of the offence punishable under Section 396, 147, 323/149 I.P.C.

2. The prosecution story, in brief, is that on the intervening night of 13th and 14th June, 1983, at about 1:30 A.M., five miscreants, one armed with sword and others with lathies, entered in the house of Mangal Singh (one of the deceased), resident of Roshanpur and started beating him. Due to the shouts, his wife Satya Kaur (another deceased) raised alarm, on which she too was beaten by the miscreants. P.W. 2 Prakash Kaur, sister of Mangal Singh then came to the rescue of his brother and sister-in-law, on which injuries were caused by the miscreants on her person also. Meanwhile, Mangal Singh's servant Chet Ram ran towards neighbour's house and sought their help, Immediately, neighbour Jagir Singh alongwith P.W. 3 Tara Singh-the informant, P.W. 4 Sohan Singh, with torches and lathies, came to the house of Mangal Singh, They also saw miscreants causing injuries to above three persons namely Mangal Singh SatyaK and Prakash Kaur. The miscreants on getting challenge from the witnesses, fled from the scene with gold ear-rings and a silver 'PAJEB' (silver foot-rings) of Prakash Kaur. The witnesses could see the miscreants in the light of torches. P.W. 3 Tara Singh, an eye-witness, got the First Information Report (Ext. A-2) lodged with the Police Station- Gadarpur, on the very day i.e. 14.06.1983 at 3:35 A.M. The witnesses took all the three injured to near-by hospital in Gadarur from where they were referred to Civil Hospital, Haldwani.

Mangal Singh and Satya Kaur, succumbed to the injuries and died.

3. Dr. S. Tandon (P.W. 13), conducted post mortem examination of Mangal Singh on 14.06.1983, at about 1:10 P.M. and found following ante mortem injures:-

1. Incised wound 7 cm x 1.5cm x bone deep. The frontal bone had been broken in pieces and the brain matter was coming out.
2. Incised wound 6cm x 1.5cm x bone deep on right side of head. The frontal bone had been broken and the brain matter was coming out.
3. Incised wound 6cm x 1.5cm x bone deep on right side head.

Cause of death of Mangal Singh, according to the Medical Officer (P.W. 13 Dr. S. Tandon) was coma cause by head injuries. The said Medical Officer prepared post mortem examination report Ext. A-47.

4. Post mortem examination on dead body of Satya Kaur was conducted on 15.03.1983, at about 5:30 P.M. by P.W. 1 Dr. S.P. Singh, who prepared post mortem examination report (Ext. A-1) and recorded following ante mortem injuries on her person:-

1. Stitched wound 8 cm in length midline frontal region obliquely placed more on left side. part of the bones of frontal region missing.

2. *stitched wound 3cm in length of right parietal bone.*
3. *Traumatic swelling with deformity 8cm X 4cm with fracture of both bones of right forearm.*
4. *Lacerated wound 1cm X 0.5cm X skin deep, front of right leg.*
5. *Stitched wound 1cm in length front of left leg middle part.*
6. *contusion 2cm X 1cm top of right shoul*der.

On internal examination, both frontal bones were found fractured. According to the Medical Officer (P.W. 1 Dr. S.P. Singh), cause of death of Satya Kaur was coma as a result of ante mortem injury No. 1.

5. Injuries on the person of P.W. 2 Smt. Prakash Kaur, were examined on 14.06.1983, at about 6:15 A.M. by Dr. D.P. Joshi, who prepared the injury report (ext. A-28). The said injury report shows following injuries on the person of Prakash Kaur:-

1. lacerated wound 4cm x 2cm x scalp deep over right lateral side of head, 6cm above right ear. Bleeding present.

The injury was kept under observation and X-ray of skull was advised by the doctor. (Genuiness of this report was admitted by the defence). During investigation, after recording the statement of Balbir Singh (P.W. 5) and Gulzar Singh (P.W.6). accused Prem Singh, Phool Singh

@Phula S/o Chotey, Phool Singh S/o Anup Singh, Moti Singh and Madan Singh, were apprehended by the police who suspected them to have committed dacoity, After arrest, their faces were kept covered and an identification test parade was held on 19.09.1983, in sub jail, Haldwani, before P.W. 18 Mazid Ali the then sub Divisional Magistrate in which P.W. 3 Tara Singh correctly identified accused Phool Singh @ Phula S/o Chotey (appellant), accused Phool Singh S/o Anup Singh and accused Madan Singh (appellant). P.W. 4 Sohan Singh correctly identified accused Prem Singh (appellant), Phool Singh @ Phula S/o Chotye (appellant), PhoolSsingh S/o Anup Singh and Madan Singh (appellant). P.W. 2 Prakash Kaur, the injured witness, correctly identified accused Prem Singh (appellant), Phool Singh @ Phula S/o Chotey (appellant), Phool Singh S/o Anup Singh and Moti Singh. Apart from them, witness Jagir Singh also correctly identified the said four who were identified by Prakash Kaur (P.W. 2).

6. During investigation, the blood stained clothes, rods (used in the crime), torches (in the light of which witnesses saw the crime), were taken into possession by the Investigating Officer and necessary recovery memos Ext. A- 4 to Ext. A-9, were prepared. Before aforementioned, post mortem examination was conducted on the dead bodies, inquest reports Ext. A-30 and Ext. A-37, sketches of the dead bodies Ext. A-32 and Ext. A-42, police form No. 13 (Ext. A-34 and Ext. A-43), letters to the Chief Medical Officer requesting for post mortem examination (Ext. A-31 and Ext. A-40), were

also got prepared by the Investigating Officer. Site Plans Ext. A-16 and Ext. A-17 were also prepared before the charge-sheet (Ext. A-19) was submitted before the concerned Magistrate. Necessary endorsement in the general diary, were also made from time to time and extracts of the same are Ext. A-12 Ext. A-13, Ext. A-20 to Ext. A-27, Ext. A-33 Ext. A-44 and ext. A-45.

7. Learned Magistrate registered the charge sheet and after providing the necessary copies to the accused persons, committed the case to the Court of Sessions for trial. Learned trial court after hearing the prosecution and defence, framed charge of offences, punishable under Section 396, 147 and 323/149 of I.P.C. against the accused Prem Singh, Phool Singh S/o Anup Singh, Moti Singh and Madan Singh, The trial court framed separate charge of offence punishable under Section 396, 147 and 323/149 I.P.C. in alternative under Section 412 of I.P.C. against Phool Singh @ Phoola. All the five accused persons pleaded not guilty and claimed to be tried.

8. On this, the prosecution got examined P.W. 1 Dr. S.P. Singh who conducted autopsy on the dead body of Satya Kaur, P.W. 2 Prakash Kaur (injured eye-witness), P.W. 3 Tara Singh (informant and eye-witness), P.W.4 Sohan Singh (eye-witness), P.W. 5 Balbir Singh, P.W.6 Guljar Singh, P.W. 7 Head Constable Ishwari Dutt, who prepared check report (ext. A-11) on the basis of First Information Report (Ext. A-2) and made endorsement in the general diary (Extract of which is Ext. A-12), P.W. 8 Sub-Inspector Om Prakash, who prepared site plans (Ext.

A 17 and Ext. A 16) and took blood stained soil into possession and prepared memo (Ext. A-3) and also took blood stained mosquito net (Ext 9) and cover of quilt (Ext. 8) and prepared memo (Ext. A-4), after taking into possession all pieces of wooden rod (Ext. 10) prepared memo (Ext. A-5), after taking into possession the torches of the witnesses and gave the same back in the supurdagi to them and prepared memo (Ext. A-6 and Ext. A-7), arrested accused person Prem Singh on 18.06.1983 on the information of secret informer (MUKHBIR), recovered iron rod (Ext. 12) and eucalyptus rod –Ext. 13 (used in the crime) and prepared memo (ext. A-8-), recovered looted property "PAJEB' (silver foot-ring)-Ext. 1 and prepared memo (Ext. A-18) and proved charge sheet (Ext. A-19) prepared by his successor Investigating Officer R.P. Singh, P.W. 9 Constable Khem Singh who deposed that in taking the accused persons on remand on 18.06.1983 and 19.06.1983, their faces were kept covered, P.W. 10 Constable Chhavi Singh, who has deposed that for identification parade, the accused persons were taken from Kashipur to Haldwani sub-jail with their faces covered. P.W. 11 Constable Ravinder Singh, who says that at the time of remand of the accused persons, their faces were kept covered, P.W. 12 Harcharan Lal, who has proved the endorsement in the general diary, P.W. 13 Dr. S.Tandon, who conducted autopsy on the dead body of Mangal Singh, P.W. 14 Constable Rakesh Kumar, who has stated that on 26.08.1983, when the accused persons were taken to the court and brought back their faces were kept covered, P.W. 15 Constable Karan Singh, who has stated that on

14.07.1983, in the lock-up also, the faces of the accused were kept covered, P.W. 16 Head Constable Suresh Chandra who has also stated the same regarding Moti Singh that on 28.07.1983, when the accused was taken to the court with covered face, P.W. 17 Constable Shiv Singh, who has also given similar evidence regarding accused Madan Singh and P.W. 18 Mazid Ali, the then Sub Divisional Magistrate before whom the test identification parade was conducted. The oral and documentary evidence was put to the accused persons by the trial court under Section 313 of Cr.P.C. The accused persons alleged that they have falsely been implicated in the crime and evidence against them is false. No evidence in defence was given by the accused persons. Learned trial court, after hearing the prosecution and the defence, convicted the accused appellant Prem Singh, Phool Singh @ Phula S/o Chotey and Madan Singh on the charge of offence punishable under Section 396 I.P.C. and sentenced (after hearing on sentence) each one of them to imprisonment for life, against which they have preferred criminal appeal No. 1113 of 2001 (old No. 3385). Said accused/appellants were not found guilty of the other charges. Rest of the two accused/appellants Phool Singh S/o Anup Singh and Moti Singh, were not found guilty of any of the charges. Aggrieved by their non-conviction, State has also preferred criminal government appeal No. 1112 of 2001 (old No. 678 of 1986). Both these appeals were filed before the Allahabad High Court wherefrom these are received by this court under Section 35 of U.P. Reorganization Act, 2000, for their disposal.

9. We heard learned counsel for the parties and perused the entire evidence on record.

10. From the prosecution story, as narrated above and the documents and oral evidence mentioned above, it is clear that in the incident of alleged robbery/dacoity, two persons namely Mangal Singh and Satya Kaur, have lost their lives. The only surviving injured eye-witness is P.W. 2 Prakash Kaur. Other eye-witnesses, P.W. 3 Tara Singh (informant) and P.W. 4 Sohan Singh reached from the neighborhood to witness the incident, on being asked for help by Chet Ram, servant of Mangal Singh (deceased). P.W. 2 Prakash Kaur, has stated that in the night of the incident, she was sleeping in the courtyard of the house and his brother and sister-in law were also sleeping there. Their servant Chet Ram was also sleeping at some distance. The witness states that she got up when she heard noise and saw five persons are beating her brother. She further states that he sister-in-law (Satya Kaur) also woke up and shouted at the miscreants why they are killing her husband (Mangal Singh). Then out of the five miscreants, two started beating sister-in-law (Satya Kaur) of this witness. Meanwhile, Chet Ram ran away for help. P.W.2 Prakash Kaur States that the miscreants also gave her beating and when she got conscious, she found that her gold ear-rings and 'PAJEB' (silver foot rings), were missing. She identified the recovered 'PAJEB' (Ext-1) in the court. However, this witness states that out of the five, she knew accused Phool Singh S/o Anup Singh and

his relative Moti Singh, by name and as to rest of the accused she could see their faces in the light of torches. she further states that at the time of identification test parade, she identified correctly all of the accused persons except Madan Singh in jail. This witness. at the end of her examination in chief, states that one of the miscreants was armed with sword and rest of the miscreants were armed with rods.

11. P.W. 3 Tara Singh, informant has stated on oath before the trial court that at about 1:30 A.M. in the night of the incident 'AKHAND PAATH' (recitation without break) was going on in the house of Jagir Singh, when suddenly Chet Ram, servant of Mangal Singh (one of the deceased), came running and asked for help. On this, this witness states that he along with Jagir Singh and Sohan Singh, went with torches and laties in the house of Mangal Singh and saw five miscreants were beating Mangal Singh, Prakash Kaur and Satya Kaur (another deceased). This witness further corroborates that one of the miscreants was armed with sword and others were armed with rods. P.W. 3 Tara Singh further states that he, with the help of others, took all the three injured to the near by hospital at Gadarpur. The witness further states that he got lodged the First Information report (Ext. A-2) with the police station and again came back to the hospital from where injured, considering their serious condition, were referred for Civil Hospital, Haldwani. P.W. 3 Tara Singh informant and eye-witness, further states that blood stained soil and broken pieces of bone of the deceased, blood stained mosquito net, were

Collected by the Investigating Officer in his presence and recovery memos were prepared. P.W. 3 Tara Singh, lastly states that he identified correctly three of the miscreants in jail. He also identified then in the court. They were Phool Singh @ Phula S/o Chotey, Phool Singh, S/o Anup Singh and Madan Singh (appellant).

12. P.W. 4 Sohan Singh, another eye-witness, who reached at the spot with Tara Singh (P.W. 3), on being asked for help by Chet Ram, servant of Mangal Singh, corroborates that in the night of the incident 'AKHAND PAATH' was going on in the house of Jagir Singh in village Roshanpur, when at about 1:30 A.M., Mangal Singh's servant Chet Ram came running for help This witness corroborates that he along with Jagir Singh and Tara Singh went to the house of Mangal Singh with torches and lathies. They saw five persons beating Mangal Singh, Satya Kaur and Prakash Kaur. P.W. 4 Sohan Singh further corroborates that one of the miscreants was having weapon like a sword. The witness states that on being challenged, miscreants fled away. P.W. 4 Sohan Singh further states that he with other witnesses, made efforts to chase the culprits to some distance and then came back to the house of Mangal Singh and saw that Mangal Singh and his wife Satya Kaur were lying unconscious. Mangal Singh's sister has also become unconscious by then. There was bleeding from the injuries of all the three injured persons. The witness further states that he along with other persons took the injured persons in a tractor trolley to Gadarpur hospital. he further states that he could see the

miscreants in the light of the torches. P.W. 4 Sohan Singh further states that in identification parade in jail, he recognized four of the five miscreants, namely Phool Singh S/o Anup Singh, Madan Singh (appellant), Phool Sing @ Phula, and Prem Singh (appellant). This witness categorically states that he saw the accused persons at the time of the incident and thereafter at the time of identification parade. He recognized above four accused persons in the court also. P.W. 2 Prakash Kaur has also made similar statement in her cross-examination that she too saw the accused persons at the time of incident and recognized the three of them correctly at the time of identification parade and thereafter in the court. And like P.W. 4 Sohan Singh, P.W. 2 Prakash Kaur also stated that she did not see the accused persons in between. P.W. 3 Tara Singh has also given similar statement at the end of his examination in chief that he did not see the accused persons between the day of the incident and the identification parade or before the day of the incident.

13. The prosecution has adduced sufficient evidence to show that the accused persons after their arrest were kept 'BAPARDA' (covered faces) as is clear from the evidence of P.W. 9 Constable Khem Singh, P.W. 10 Constable Chhavi Singh, P.W. 11 Constable Ravinder Singh, P.W. 12 Constable Harcharan Lal, P.W. 14 Constable Rakesh Kumar, P.W. 15 Constable Karan Singh, P.W. 16 Head Constable Suresh Chandra and P.W. 17 Constable Shiv Singh. As far as accused Phool Singh S/o Anup Singh and accused Moti Singh, are

concerned, the trial court has found them not guilty on the ground that P.W. 2 Prakash Kaur has stated that she knew them before the date of the incident and their names did not figure in the First Information Report. Though the First Information Report is lodged by P.W. 3 Tara Singh and not by Prakash Kaur but the identification of these two accused in the jail by Prakash Kaur loses its all importance as against them for they were known to Prakash kaur. P.W. 2 Prakash Kaur in her cross examination states that when witnesses Tara Singh, Sohan Singh and Jagir Singh came at the spot, she was conscious. She says that she did not call Moti Singh or Phool Singh S/o Anup Singh by their names. In the circumstances, there appears reasonable doubt as to the involvement of these two accused persons namely Phool Singh S/o Anup Singh and Moti Singh if they had actually participated in the crime. Therefore, reason for not finding them guilty of the charges framed against them, as mentioned by the trial court, cannot be said to be without substance and we up hold such reasoning and the two accused i.e. Phool Singh S/o Anup Singh and Moti Singh were entitled to be acquitted of the charges framed against them.

14. Now. we have to examine whether the conviction under Section 396 I.P.C. recorded by the trial court, as against accused/appellant Prem Singh, Phool Singh @ Phula S/o Chotey and Madan Singh is correct or not. Before examining that issue, we think it proper here to discuss that to prove commission of dacoity, it is

necessary to prove that the persons who participated in the crime were five or more than five in number.

15. Learned counsel for the accused/appellants, drew our attention to the principle of law laid down in ***Ram Lakhan Vs. State of U.P. AIR 1983. S.C. 352*** in which out of the nine accused persons. five were acquitted by the Sessions court and only four were convicted. The High Court further acquitted three accused and convicted only one. In that circumstances, the Apex Court held that one persons alone cannot commit dacoity. We are also of the view that trial court in this case convicted three persons and acquitted tow without holding that it is established that there could have been other two persons and if the offence was committed by five persons. Had there been a finding by the trial court on the basis of the evidence on record that five persons committed robbery, it could have been said that even if only three out of the five persons, were found guilty, the conviction under Section 396 I.P.C. could be maintained. But the trial court has failed to record the finding that actually five persons conjointly committed the crime. As such, participation on the part of the three accused/appellants in robbery in which it is established that they had committed robbery and caused death of two persons and voluntarily hurt one person (Prakash Kaur), their act is covered under section 394 of I.P.C., whereby each one of the three is liable to the punishment of imprisonment for life or with rigorous imprisonment or a term which may extend to ten years with fine. In similar circumstances, Hon'ble the Supreme Court in ***Chottan***

Mahton Vs. The State of Bihar 1969 (3) supreme Court Cases 727, converted the conviction of the appellant from Section 396 I.P.C. to one under Section 394 I.P.C. and maintained the sentence of imprisonment for life. In the present case also, two eye-witnesses P.W. 3 Tara Singh, informant and P.W. 4 Sohan Singh, have stated, when Chet Ram Came to them, he told four-five persons were beating his master, However, these witnesses have stated that when they reached at the spot of the incident, they found five persons committing the offence. But the identification of the two accused, namely Phool Singh S/o Anup Singh and Moti Singh was disbelieved by the trial court, as they were known to P.W. 2 Prakash Kaur. In the circumstances, we follow the principle of law laid down in Chottan Mahton (Supra) and hold that from the evidence on record, it is proved beyond reasonable doubt that appellant Prem Singh, Phool Singh @ Phula S/o Chotey and Madan Singh participated in the crime committing robbery (causing death of two persons and hurt to third one). Appellant Prem Singh is identified correctly by P.W. 4 Sohan Singh and P.W. 2 Prakash Kaur, apart from Jagir Singh, who was not examined. Appellant Phool Singh @ Phula S/o Chotey, was correctly identified by P.W. 3 Tara Singh, P.W. 4 Sohan Singh and P.W. 2 Prakash Kaur apart from Jagir Singh (who was not examined). Appellant Madan Singh is identified correctly by P.W. 3 Tara Singh and P.W. 4 Sohan Singh, as is clear also from test identification parade memo (Ext.-A-52) read with statement of P.W. 18 Mazid Ali the then Sub Divisional Magistrate.

16. Sri Sayed Nadim, Learned counsel for the accused/appellant, argued that Chet Ram, servant of Mangal Singh (deceased) was not examined by the prosecution who could have been the best witness of the crime. As such, the prosecution story should not be believed. We do not see any substance in the argument for the reason that in the cross-examination of P.W. 3 Informant Tara Singh, it has been explained that Chet Ram is not traceable. Naturally, after the death of his master (Mangal Singh), Chet Ram might have left the job. He was not of the village Roshanpur, where the incident had taken place.

17. On behalf of the appellant, it is also argued that in the site plan, the Investigating Officer has not marked the place from where they have seen accused committing the crime. As such, the investigation of the crime has not been done properly and accused/appellant cannot be convicted for the offence charged. We are of the opinion that merely for some mistake on the part of Investigating Officer, the entire prosecution story, which is otherwise trust worthy, cannot be disbelieved. ***In State of West Bengal Vs. Meer Moh. Umar 2000 (8) Supreme Court Cases 382,*** The Apex Court has observed as under:-

“ Castigation of investigation unfortunately seems to be regular practice when the trial courts acquitted the accused in criminal cases. In our perception, it is almost impossible to come across a single case wherein the investigation was completely. flawlessly or absolutely full proof. The function of criminal courts should not be waisted in taking out the lapses in investigation and by

expressing unsavoury criticism against the Investigating Officer."

18. It is also contended on behalf of the appellants that the torches of the witnesses were said to have been taken into possession by the investigating Officers and given in the supurdagi (custody) of the witnesses back to them, but the same was not produced during the trial before the court. As far as, the torches of the witnesses are concerned, on examination of the evidence on record, we found that Investigating Officer did take said articles in possession and gave back to the witnesses in their supurdagi after making memos, which are proved, on the record. The trial court has not relied said evidence in finding that accused/appellant has committed the crime. non-production of such articles during trial before the court, cannot be said to be fatal to the prosecution case.

19. In the connected appeal, filed by the State under Section 378 (3) of Cr.P.C. [leave was granted by the Allahabad High Court], after hearing the parities, we do not see any reason to reverse the trial court's judgment on the point acquittal of accuse/respondents Phool Singh S/o Anup Singh and Madan Singh, as we are of the opinion that in a case where two views are possible, the appellate court should not reverse the acquittal only for the reason that other view was also possible.

20 <u>During the appeal, it has come on the record that accused/appellant Phool Singh @ Phula S/o Chotey, has</u>

died. In the State appeal, accused/respondent Moti Singh has also died. Therefore, the appeal filed by Phool Singh @ Phula S/o Chotey, stands abated and appeal filed by State as against the accused/respondent Moti Singh also stands abated.

21. For the reasons as discussed above, criminal appeal No. 1112 of 2001 (old No. 678 if 1986) filed by the State is liable to be dismissed. The same is dismissed. The criminal appeal No. 1113 of 2001 (old No. 3385 of 1985) filed by convict/appellants is also liable to be dismissed and the same is dismissed with the modification that the accused/appellants Prem Singh and Madan Singh are convicted under Section 394 I.P.C. instead of Section 396 I.P.C. And each one of them is sentenced to imprisonment for life. They are on bail. their bail is cancelled. Both these accused/appellants Prem Singh and Madan Singh shall be taken into custody by the court concerned to serve out the sentence. However, they stand acquitted from the charges under Section 147, 323/149 and 412 I.P.C. (The accused/respondent Phool Singh S/o Anup Singh also stands acquitted from the charges framed against him).

(Prafulla C. Pant,J.) **(Rajeev Gupta, C.J.)**

Dt: 14.06.2006
Sweta